

COM/CXW/avs

Decision 01-08-018 August 2, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the operation of interruptible load programs offered by Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company and the effect of these programs on energy prices, other demand responsiveness programs, and the reliability of the electric system.

Rulemaking 00-10-002
(Filed October 5, 2000)

**INTERIM OPINION LIMITING SERVICE OF COMMENTS
ON CATEGORY M DRAFT DECISION AND
MINOR MODIFICATION OF DECISION 01-05-089**

1. Summary

This decision limits the service requirement for parties' comments on the forthcoming draft decision regarding exemptions from rotating outages for some customers (Category M). Further, it provides that this decision limiting the service requirement will be posted on the Commission's web page, but will not be served on all parties on the Category M service list in this proceeding.

2. Background

By Decision (D.) 01-05-089, the Commission added Category M to the list of essential customers normally exempt from rotating outages.¹ Category M is “limited other customers as necessary to protect public health and safety, to the extent exempted by the Commission.”

D.01-05-089 also approved and confirmed the May 21, 2001 ACR, which established a process for considering Category M petitions. The process included the filing of petitions by June 1, 2001. The deadline was extended to June 4, 2001, given the large number of petitions.² Further, the process provides for the filing and service of a draft decision, upon which parties may submit comments. The ACR requires that such comments be filed and served.

3. Discussion

Nearly 10,000 petitions were filed by the close of business on June 4, 2001. The burden upon any party filing comments on the forthcoming Category M draft decision to also serve nearly 10,000 parties is unreasonable. As a result, we limit the service requirement to only the following persons at the Commission: Commissioner Wood, Administrative Law Judge (ALJ) Mattson, ALJ Galvin, Jonathan Lakritz, and Laura Martin.

Further, we authorize either the Assigned Commissioner or the ALJ to make additional modifications to the process established in the May 21, 2001

¹ Draft decision proposing Category M issued for comment on May 3, 2001; Assigned Commissioner’s Ruling (ACR) dated May 21, 2001 establishing a process to qualify for Category M; D.01-05-089 adopted on May 24, 2001 establishing Category M, plus approving and affirming the May 21, 2001 ACR.

² ACR dated June 1, 2001.

ACR, and confirmed in D.01-05-089. That is, the Assigned Commissioner or ALJ may make reasonably necessary modifications to facilitate and secure a just, speedy and inexpensive determination of the issues without coming back to the full Commission for approval. (Rule 87 of the Commission's Rules of Practice and Procedure.)

4. Need for Expedited Consideration

Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure provides in relevant part that:

"...the Commission may reduce or waive the period for public review and comment under this rule...for a decision where the Commission determines, on the motion of a party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. "Public necessity" includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period...would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver."

On our own motion, we waive the period for public comment regarding the draft decision on limiting service. Absent waiving the comment cycle on the proposed decision limiting service, we would need to require burdensome service of nearly 10,000 documents by any party wishing to submit a comment. This would be unreasonable.

Moreover, the proposed reduction in service of comments on the forthcoming Category M draft decision is a benefit to parties with no apparent harm. For example, we do not anticipate permitting reply comments on the forthcoming Category M draft decision. As a result, there is little to no benefit in requiring service of nearly 10,000 documents by each party seeking to submit comments on the Category M decision, and no known harm caused by limiting service. On the other hand, filing will be required so that the comments on the Category M draft decisions will be in the formal file. As such, any party or member of public will have access to review comments as necessary or desirable for any reason. Comments on the draft decision limiting service would be of little or no benefit.

At the same time, substantial benefits result from waiving the period for public comment on the draft decision limiting service. That is, any delay in adopting this modification delays placing customers in Category M and, to the extent Category M serves to protect public health and safety, jeopardizes public health, safety and welfare by increasing the risk of those customers experiencing a rotating outage. On balance, public necessity requires waiving the period for public review and comment on the draft decision reducing service of comments on the forthcoming Category M draft decision.

5. Draft Decision

On July 27, 2001, the draft decision of Presiding Officer and Assigned Commissioner Wood on this matter was served on parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. The period for public comment is waived pursuant to Rule 77.7(f)(9).

The draft decision was served on all of the approximately 10,000 petitioners. Because the draft decision was served on all Category M parties, we will not serve a copy of the final decision. Rather, this decision, as with all current Commission decisions, will be posted on the Commission's web page, and will be fully accessible by all petitioners, the press, and all members of the public.³ There is substantial cost and administrative burden in serving 10,000 copies of any document. Not serving essentially the same document a second time will eliminate substantial costs and burdens. Serving the draft decision on limiting service and not the final decision on limiting service, but posting that final decision on the web, ensures that all parties have reasonable access to both the draft and final decisions on limiting service.

Findings of Fact

1. D.01-05-089 approved and confirmed the May 21, 2001 ACR.
2. The May 21, 2001 ACR established a process for considering Category M petitions.
3. The process requires that comments on the draft decision be filed and served.
4. Nearly 10,000 petitions were filed by the close of business on June 4, 2001.
5. The public interest in waiving the period for public comment on the draft decision limiting service of comments on the forthcoming Category M

³ All draft (comment) and final decisions in this proceeding may be accessed from the Commission's web page by clicking on "Official Documents," at the left side of the opening page, clicking on "All Document Type Detailed Search Page," selecting either "Comment Decision" or "Final Decision" for document type, typing in "R0010002" for proceeding number, and clicking on "Search." The final decision regarding limiting the service requirement will be noted with a publication date on or about August 2, 2001.

draft decision outweighs the public interest in a reduced or full 30-day comment cycle with the concurrent burden on each party of also serving nearly 10,000 copies of its comments on all other parties.

6. The draft decision limiting service was served on all of the approximately 10,000 petitioners for Category M and is essentially, if not exactly, the same as the final decision.

Conclusions of Law

1. The burden upon any party filing comments on the Category M draft decision to also serve nearly 10,000 parties is unreasonable.

2. All comments on the Category M draft decision shall be filed pursuant to the Commission's Rules of Practice and Procedure, but the service requirement should be limited to only the following persons at the Commission:

Commissioner Wood, ALJ Mattson, ALJ Galvin, Jonathan Lakritz, and Laura Martin.

3. Either the Assigned Commissioner or the ALJ should be authorized to make additional reasonably necessary modifications to the process established in the May 21, 2001 ACR, and confirmed in D.01-05-089, to facilitate and secure a just, speedy and inexpensive determination of the issues without coming back to the full Commission for approval.

4. The period for public review and comment on the draft decision limiting service should be waived, pursuant to Rule 77.7(f)(9).

5. The decision limiting service should be published on the Commission's web page, but not served on parties.

6. This order should be effective today so that service of comments on the forthcoming Category M draft decision can be limited without causing a delay in issuing or considering the Category M draft decision.

INTERIM ORDER

IT IS ORDERED that:

1. Comments on the forthcoming Category M draft decision must be filed with the Commission's Docket Office in the number specified by Rule 2.5 of the Commission's Rules of Practice and Procedure (i.e., an original plus 4 copies), but service is limited to only the following persons at the Commission: Commissioner Wood, Administrative Law Judge (ALJ) Mattson, ALJ Galvin, Jonathan Lakritz, and Laura Martin.
2. Decision (D.) 01-05-089 is modified to incorporate Ordering Paragraph 1 of this order.
3. The Assigned Commissioner, or the ALJ, may order all reasonably necessary further modifications to the process established in the May 21, 2001 Assigned Commissioner's Ruling, and confirmed in D.01-05-089, to secure a just, speedy and inexpensive determination of the issues, without coming back to the full Commission for approval.
4. This decision limiting service shall be published on the Commission's web page, but shall not be served on parties.

5. This proceeding remains open.

This order is effective today.

Dated August 2, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily
absent, did not participate.